## ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

INTERSTATE COMMERCE COMMISSION.[2]
UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF ARKANSAS.[3]
UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS.
UNITED STATES CIRCUIT COURT, SOUTHERN DISTRICT OF IOWA.[3]
UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF MICHIGAN.[3]
UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF MISSOURI.[3]
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.[3]
UNITED STATES DISTRICT COURT, DISTRICT OF OREGON.[3]
SUPREME COURT OF ARIZONA.[4]
SUPREME COURT OF CALIFORNIA.[5]
SUPREME COURT OF ILLINOIS.[6]
SUPREME COURT OF INDIANA.[7]
SUPREME COURT OF KANSAS.[8]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[9]
SUPREME COURT OF NEVADA.[10]
COURT OF ERRORS AND APPEALS OF NEW JERSEY.[11]
COURT OF APPEALS OF NEW YORK.[12]
SUPREME COURT OF PENNSYLVANIA.[13]
SUPREME COURT OF SOUTH CAROLINA.[14]
SUPREME COURT OF TENNESSEE.[15]
SUPREME COURT OF VIRGINIA.[16]

### ADMIRALTY.

*Anchors* sufficiently strong to hold a tug and her tow, ought to be carried by the tug at a season when violent squalls are not infrequent and the tug has not sufficient engine power to counteract the strength of the squall: *Hadden* v. *The J. H. Rutter*, U. S. Dist. Ct. S. Dist. N. Y. May 22, 1888.

### BANKS.

*Statute of limitations* does not begin to run against funds deposited in a bank, subject to call at any time, until a demand is made for such funds: *Starr* v. *Stiles*, S. Ct. Ariz., Oct. 1, 1888.

### BILLS AND NOTES.

*Alteration* of a note, in a material part, by increasing the rate of interest and making joint instead of several, avoids the note, but does not affect the validity of a mortgage given to secure the note: *Heath* v. *Blake*, 28 S. C. 406.

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[1] To appear in 127 U. S. Rep.
[2] To appear in 2 I. S. Com. Rep.
[3] To appear in 35 Fed. Rep.
[4] To appear in 2 Ari. Rep.
[5] To appear in 74 or 75 Cal. Rep.
[6] To appear in 123 or 124 Ill. Rep.
[7] To appear in 114 or 115 Ind. Rep.
[8] To appear in 39 or 40 Kan. Rep.
[9] To appear in 145 or 146 Mass. Rep.
[10] To appear in 20 or 21 Nev. Rep.
[11] To appear in 50 or 51 N. J. Law.
[12] To appear in 110 or 111 N. Y. Rep.
[13] To appear in 119 or 120 Pa. State.
[14] To appear in 28 S. C. Rep.
[15] To appear in 86 or 87 Tenn. Rep.
[16] To appear in 83 or 84 Va. Rep.

*Discharge of Surety* on note discounted by bank is not affected by the bank's subsequent acceptance from principal, without the knowledge of surety, of other notes with forged indorsements, in settlement of the original note, and the surrender of the latter, the bank being ignorant of the forgery: *First Nat. Bank of Athens v. Buchanan*, S. Ct. Tenn., Sept. 26, 1888.

*Protest* must be personally notified to the indorser at his residence or office, where both are but 208 yards distant from the post-office of the place of protest, and are both open on the day of protest, even though the indorser himself is absent in a distant city; a drop letter sent through the mail, there being no mail carriers, is insufficient: *Brown* v. *Bank of Abingdon*, S. Ct. Va., July 26, 1888.

## Common Carriers.

*Discharging goods* from a ship on to a pier, after notice to the consignee of arrival and after a reasonable opportunity to remove the goods, is a constructive delivery such as terminates the carrier's liability: but a warehouseman's liability will remain until actual delivery: *Tarbell* v. *Royal Exchange Shipping Co. Limited*, Ct. App. N. Y., June 29, 1888.

## Corporations.

*An inhabitant*, since the Act of March 3, 1887, only of the district where its principal place of business is, when sued for infringement of a patent right, there being no statute in Illinois, requiring the appointment of an agent, upon whom process might be served: *Gormully & J. Mfg. Co.* v. *Pope Mfg. Co.*, U. S. Circ. Ct. N. D. Ill., May 14, 1888.

*Subscribers* to capital stock of a bank are liable for unpaid instalments upon their subscriptions, though the by-laws and stock subscriptions may have been illegal, because the trustees were not stockholders; the alleged subscribers having acquiesced in the acts of such trustees for years and allowed themselves to appear as subscribers are bound: *Ross* v. *Bank of Gold Hill*, S. Ct. Nev., Sept. 25, 1888.

## Criminal Law.

*Discharge by magistrate*, after arrest and examination, is not a bar to a second arrest on the same charge, as a person has not been once in jeopardy, until put upon trial, in a court of competent jurisdiction, on indictment or information sufficient in form and substance to sustain a conviction, and a jury has been charged with his deliverance: *Ex parte Fenton*, S. Ct. Cal., Oct. 9, 1888.

*Insulting words*, alone, are not a sufficient provocation to reduce a murder to the grade of manslaughter: *State* v. *Jacobs*, 28 S. Car. 29.

## Domicile.

*Change* of home and of place of voting will be conclusively presumed when a man goes to another State and acquires a homestead

under the Acts of Congress, or exercises the rights of an elector to which a permanent residence is a requisite; subsequent statements under oath, that he did not mean to change his domicile, but intended to return to his former home, cannot be permitted to control the decision of his right to vote: *Kreitz* v. *Behrensmeyer*, S. Ct. Ill., May 9, 1888.

### Elections.

*Arrest* may lawfully be made at a congressional election, without a warrant, by a deputy U. S. marshal, who sees a vote rejected because the party has not been naturalized, hears him advised to try another polling place, follows there and finds he has voted; the officer need not be an eye or ear witness of every fact necessary for the commission of the crime: *Ex parte Morrill*, U. S. Circ. Ct. Dist. Oregon, June 18, 1888.

### Equity Practice.

*Rehearing* will be granted when counsel omits to present testimony which he has ready, but does not offer under a misapprehension of a decision upon an offer of testimony from the other side: this is not to encourage negligence, but to recognize that counsel of ability and fitness are not exempt from the common imperfection of all human efforts: *Hulsizer's Admrs.* v. *Opdyke*, Ct. Err. and App. N. J., July 5, 1888.

### Evidence.

*Letters* written by an agent of the plaintiffs are admissible to impeach his testimony in relation to the same subject: consequently, where a witness stated a fact, and upon cross-examination was shown and recognized two letters with certain memoranda on them, as written by himself, these letters and memoranda are admissible to impeach the fact he had sworn to: *Antony* v. *Jones et al.*, S. Ct. Kan. June 9, 1888.

### Government Contracts.

*Section* 3737, Rev. Stat. U. S., that "no contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given," whatever may be its scope, does not embrace a lease of real estate to be used for public purposes, and under which the lessor is not required to perform any service for the government, and had nothing to do, in respect to the lease except to receive, from time to time, the rent agreed to be paid; such lease may be assigned to a mortgagee without affecting the lease: *Freedman's S. & T. Co.* v. *Shepherd*, S. Ct. U. S., April 30, 1888, 127 U. S. 494.

### Interstate Commerce Law.

*Tank cars* for the carriage of oil cannot be demanded by a shipper under the last subdivision of § 3 of the Act, as the term "facilities" does not embrace car equipment for the origination and transportation of freight in this sense, but only facilities for interchange of traffic at

terminal points; nor under the term "instrumentalities of shipment or carriage," in § 1, as the statute has provided ample remedies in different tribunals without clothing these tribunals by direct expression or necessary implication with the power of directing the carrier what equipment it shall furnish: *Scofield* v. *L. S. & M. S. R. R. Co.* The Commission, July 19, 1888; 2 T. S. Com. Rep. 67.

## LIBEL.

*An effigy* hung from a tree in a public street, and bearing a placard with the words, "By George—the old Liar," is a libel, if understood by the neighbors to mean a particular person addicted to the exclamation "By George": *Johnson et al.* v. *The Comm.*, S. Ct. Penna., May 25, 1888.

## LIFE INSURANCE.

*Waiver* of any law, preventing any physician from disclosing any information acquired in attending the applicant in a professional capacity, may be made by a clause in application and policy; at least there is nothing in § 4017 Rev. Stat. Mo. which does more than confer a personal privilege; it is not declaratory of any public policy, and the courts of this State follow the rulings of those in New York and Michigan, under a similar statute: *Adreveno* v. *Mut. Res. Fund L. Assn.*, U. S. Circ. Ct. E. D. Mo., April 23, 1888.

## LIQUOR LAWS.

*Cider* is an alcoholic, vinous, and fermented liquor and its sale is forbidden by a statute prohibiting the sale of such liquors, without naming cider: *Eureka Vinegar Co.* v. *Gazette Pub. Co.*, U. S. Circ. Ct. E. Dist. Ark., June 30, 1888; 35 Fed. 570.

## MORTGAGES.

*Rents and profits* of the mortgaged property cannot be appropriated by the mortgagee immediately upon a default, where the trust deed provided that the mortgagor should remain in possession and take the rents and profits for his own use until default in payment of the notes secured, or interest and charges, and upon default, that the trustee should sell the mortgaged premises; the deed gives the mortgagee no right of possession and taking the rent and income: *Freedman's S. & T. Co.* v. *Shepherd*, S. Ct. U. S., April 30, 1888, 127 U. S. 494.

## PATENTS.

*License* depends upon no particular form of words, as it is anything which confers upon another the right to do an act which would otherwise be illegal; hence, a covenant not to sue for future infringements is a license which cannot be annulled on failure to account, and which will prevent a suit for an infringement: *Seibert C. Oil Cup Co.* v. *Detroit L. Co.*, U. S. Circ. Ct. E. D. Mich., Feb. 14, 1888.

## Railroads.

*Clear track* may be presumed by an engineer of a passenger train who sees a loaded team slowly approaching the track at an up grade, having given the usual signal, and his train being in plain view from the highway; he is not bound to slacken the speed of the train or presume that the driver of the team is asleep: *I. B. & W. R. R. Co.* v. *Wheeler*, S. Ct. Ind. June 19, 1888.

*Contract* of express messenger to release the carrier from liability for negligence, in consideration of being allowed to ride in the baggage car, is not against public policy or unreasonable; the risk assumed is the same as that by baggage masters, and the contract is for a privilege which the carrier is not bound to grant: *Bates* v. *Old Colony R. R. Co.*, S. Jud. Ct. Mass., June 20, 1888.

*Mandatory* injunction will be granted to compel a railroad to receive freight and passengers from a connecting road: it is not ground for refusal that the engineers and firemen on the connecting road have struck and those on the defendant road threaten to strike, if the cars of the connecting road are handled: *Chicago, B. & Q. R. R. Co.* v. *Burlington, C. R. & N. R. R. Co.*, U. S. Circ. Ct. S. Dist. Iowa, May 23, 1888.

*Tariffs* may be classified by the Legislature, in the absence of charter restriction, according to the length of the line, if all railroads are uniformly classified: *Dow* v. *Beidelman*, S. Ct. U. S., April 16, 1888, 125 U. S. 680.

## U. S. Courts.

*Citizenship*, to give jurisdiction to the Circuit Courts of the U. S., must be that in another State of the Union or a foreign State and not that in a Territory of the U. S. or the District of Columbia, and a distinct statement of the citizenship must be made in the pleadings, or else the Circuit Court or Supreme Court will of its own motion take notice of the defect in jurisdiction: *Cameron* v. *Hodges*, S. Ct. U. S., April 30, 1888, 127 U. S. 322.

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